

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)	
In re:)	Chapter 11
)	
SEARS HOLDINGS CORPORATION, <i>et al.</i> , ¹)	Case No. 18-23538 (RDD)
)	
Debtors.)	(Jointly Administered)
)	

**MOTION OF ESL INVESTMENTS, INC. AND TRANSFORM HOLDCO LLC FOR
LEAVE TO FILE UNDER SEAL CERTAIN EXHIBITS TO THE DECLARATION OF
CHELSEY ROSENBLOOM IN SUPPORT OF LIMITED OBJECTION AND
RESERVATION OF RIGHTS OF ESL INVESTMENTS, INC. AND TRANSFORM
HOLDCO LLC TO JOINT CHAPTER 11 PLAN OF SEARS HOLDINGS
CORPORATION AND ITS AFFILIATED DEBTORS**

ESL Investments, Inc. and certain of its affiliated entities (including JPP, LLC and JPP II, LLC) (collectively, “ESL”) in their capacities as creditors of Sears Holdings Corporation and certain of its affiliates (collectively, “Sears” and with respect to its Chapter 11 affiliates, the “Debtors”), and Transform Holdco LLC (“Transform”), the buyer under the Asset Purchase

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR-Rover De Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Agreement (as defined in the Plan), by their undersigned counsel, hereby respectfully submits this motion (this “Motion”) pursuant to the *Amended Stipulated Protective Order* entered on December 4, 2018 (ECF No. 1084) (the “Amended Stipulated Protective Order”), requiring the filing under seal of redacted portions of Exhibit A (the “Declaration Exhibit”) to the *Declaration of Chelsey Rosenbloom In Support of Limited Objection and Reservation of Rights of ESL Investments, Inc. and Transform Holdco LLC’s Objection to Joint Chapter 11 Plan of Sears Holdings Corporation And Its Affiliated Debtors* (the “Limited Objection”). ESL and Transform respectfully seek entry of an order, substantially in the format attached hereto as **Exhibit 1** (the “Proposed Order”). In further support of this Motion, ESL and Transform respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York, dated December 1, 2016.
2. Venue is proper under 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 9018-1 and 9077-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”).

BACKGROUND

4. On October 15, 2018 (the “Petition Date”) and continuing thereafter, Sears Holdings Corporation (“SHC” or “Sears”) and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) each filed a

voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have been operating and managing their businesses as debtors-in-possession.

5. On July 9, 2019, the Debtors filed the *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (the “Plan”) [Docket No. 4476]. The Debtors have scheduled a hearing for the confirmation of the Plan for August 16, 2019 at 10:00 a.m.

6. ESL and Transform will be filing with the Court its Limited Objection, along with an accompanying declaration and exhibits thereto, by no later than Friday, August 2, 2019 at 4:00 p.m.

7. The Debtors have instructed ESL and Transform that the Declaration Exhibit was made available pursuant to the Amended Stipulated Protective Order and designated as “Highly Confidential.” The Debtors have further instructed ESL and Transform that the Declaration Exhibit and the Limited Objection must be redacted in a manner consistent with the redactions in Exhibit C of the Debtors’ Disclosure Statement (the “Disclosure Statement”) [Docket No. 4478].

8. ESL and Transform are complying with their obligations under the Amended Stipulated Protective Order to seek to file the unredacted Declaration Exhibit under seal, as well as filing an unredacted copy of the Limited Objection under seal.

RELIEF REQUESTED

9. By this Motion, ESL and Transform seek entry of the attached Proposed Order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Rules 9018 and 9037 of the Bankruptcy Rules, granting permission to file the unredacted Limited Objection and Declaration Exhibit under seal with the Clerk of this Court in an envelope clearly indicating that the same has been filed under seal by Order of the United States Bankruptcy Court for the Southern District of

New York and may not be unsealed until and unless permitted by further order of the Court, or as otherwise specified by the Chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge.

BASIS FOR RELIEF

10. The Amended Stipulated Protective Order sets forth the procedures for designating discovery material as either Confidential or Highly Confidential and provides the terms for the limited use of such materials. Moreover, the Amended Stipulated Protective Order governs the use of Confidential and Highly Confidential materials in pleadings or other papers filed with the Court. Specifically, the Amended Stipulated Protective Order requires that all portions of pleadings, motions or other papers filed with the Court that disclose Confidential or Highly Confidential materials be filed under seal. See Amended Stipulated Protective Order ¶ 13.

11. The Limited Objection relies upon, describes and cites to documents and information that have been designated under the Amended Stipulated Protective Order as Confidential or Highly Confidential. Pursuant to the Amended Stipulated Protective Order, ESL and Transform are required to file the Declaration Exhibit under seal. An unredacted version of the Limited Objection will be provided to the Court, the Debtors and the United States Trustee.

12. As instructed by the Debtors, who designated the Declaration Exhibit as “High Confidential,” ESL and Transform will also file redacted version of the Limited Objection and the Declaration Exhibit in accordance with the Debtors’ instructions.

13. The Proposed Order that ESL and Transform submit is narrowly tailored to restrict access only to confidential information and the redactions proposed are limited to portions of the documents that include confidential and sensitive information, and redacted in a manner consistent with the Debtors’ instructions and their redactions in Exhibit C of the Disclosure Statement.

NOTICE

14. Notice of this Motion will be provided in accordance with the procedures set forth in the *Amended Order Implementing Certain Notice and Case Management Procedures*, entered on November 1, 2018 (ECF No. 405). ESL and Transform respectfully submit that no further notice is required.

CONCLUSION

WHEREFORE, ESL and Transform respectfully request that the Court authorize it to file the Declaration Exhibit and the Limited Objection under seal and any further relief deemed just, proper, and equitable.

Dated: August 2, 2019
New York, New York

CLEARY GOTTlieb STEEN & HAMILTON LLP

/s/ Chelsey Rosenbloom

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*Attorneys for ESL Investments Inc. and certain of its
affiliates and Transform Holdco LLC*

Exhibit 1

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re)	Chapter 11
)	
SEARS HOLDINGS CORPORATION, <i>et al.</i> , ²)	Case No. 18-23538 (RDD)
)	
Debtors.)	(Jointly Administered)
_____)	

**PROPOSED ORDER GRANTING MOTION OF ESL INVESTMENTS, INC. AND
TRANSFORM HOLDCO LLC FOR LEAVE TO FILE UNDER SEAL CERTAIN
EXHIBITS TO THE DECLARATION OF CHELSEY ROSENBLOOM IN SUPPORT OF
LIMITED OBJECTION AND RESERVATION OF RIGHTS OF ESL INVESTMENTS,
INC. AND TRANSFORM HOLDCO LLC TO JOINT CHAPTER 11 PLAN OF SEARS
HOLDINGS CORPORATION AND ITS AFFILIATED DEBTORS**

Upon the motion dated August 2, 2019 (the “Motion”)³ of ESL Investments, Inc. and certain of its affiliated entities (including JPP, LLC and JPP II, LLC) (collectively, “ESL”) and Transform Holdco LLC (the “Buyer” and together with its affiliates, “Transform”) for entry of an order authorizing ESL and Transform to file certain portions of Exhibit A (the “Declaration”

² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

³ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Exhibit”) to the *Declaration of Chelsey Rosenbloom in Support of Limited Objection and Reservation of Rights of ESL Investment Inc. and Transform Holdco LLC’s Objection to Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (the “Limited Objection”) under seal and filing a redacted version of the Declaration Exhibit and the Limited Objection, as proposed to be redacted in the Motion, on the public docket of this case; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that ESL and Transform provided appropriate notice of the Motion and no other notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. ESL and Transform are authorized to file the Declaration Exhibit and the Limited Objection under seal (the “Sealed Documents”), and to file a redacted version of the Declaration Exhibit and the Limited Objection on the public docket of this case, redacting only that information that is considered confidential and commercially sensitive pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Bankruptcy Rule 9018-1. ESL and Transform shall provide a copy of this Order and the Sealed Documents to the Clerk of the Court, 300 Quarropas St., White Plains, NY in an envelope marked “TO BE FILED UNDER SEAL.”

3. Except upon further order of the Court after notice to ESL and Transform, the Sealed Documents shall remain under seal, and shall not be made available to anyone without the consent of ESL and Transform, except that unredacted copies of the Sealed Documents shall be provided to (a) the Court, (b) the United States Trustee, (c) counsel and financial advisors to the Debtors, and (d) any other party as may be ordered by the Court or agreed to by ESL and Transform and a counterparty to any such Sealed Documents, in each case, under appropriate confidentiality agreements reasonably satisfactory to ESL and Transform. Each party to whom disclosure is made shall keep the Sealed Documents confidential.

4. ESL and Transform are authorized to take all actions necessary to effectuate the ruling set forth in this Order.

5. This Order is without prejudice to the rights of any party in interest, including the United States Trustee, to seek to unseal the Sealed Documents or any part thereof.

6. Counsel for ESL and Transform shall contact the Clerk's Office regarding the return or disposition of the Sealed Documents within 10 days after the final order determining the issues with respect to which the Declaration Exhibit and Limited Objection are submitted.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE